

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants.

**MEMORANDUM OF REASONS
IN OPPOSITION TO PLAINTIFF'S CROSS MOTION
TO COMPEL DISCOVERY [DOCKET #44]**

The plaintiff, New England Central Railroad, Inc. ("NECR"), has filed a cross motion to compel discovery [Docket #44]—specifically, the responses of the defendants, Springfield Terminal Railway Company ("STRC") and Boston and Maine Corporation ("B&M"), to NECR's interrogatories and requests for production of documents. The cross motion should be denied, or held in abeyance, for the following reasons:

First and foremost, STRC and B&M are providing the requested discovery to NECR. The materials, which include more than 1800 additional pages of documents, should reach counsel for NECR no later than Wednesday, October 18, 2006. The defendants note that the defendants already have provided hundreds of pages of documents to NECR as part of their initial disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure.

Second, the Local Rules permit the filing of a motion to compel only if at least one of three events has occurred—opposing counsel has failed to respond within seven days to a request for a discovery conference, opposing counsel has failed to attend a discovery conference, or disputed issues have not been resolved at the discovery conference. Loc. R. 37.1(b). The cross motion—accurately—makes no representation that any of these events occurred. That fact alone requires that the cross motion be denied.

Finally, the undersigned and counsel for NECR conferred by telephone on October 16, 2006, in an effort to resolve or narrow the parties' discovery disputes and thus to obviate the need for a ruling on either the defendants' motion to compel [Docket #39] or NECR's cross motion to compel [Docket #44]. Counsel hope that further resort to the Court will not be required.

Accordingly, NECR's cross motion should be denied. Alternatively, that motion and the defendants' previous motion to compel should be held in abeyance while counsel seek to resolve or narrow their discovery disputes.

Respectfully submitted,



Eric L. Hirschhorn
Winston & Strawn LLP
1700 K Street, NW
Washington DC 20006
202-282-5706

Robert B. Culliford (BBO #638468)
Iron Horse Park
1700 High Street
North Billerica MA 01862
978-663-1029

*Attorneys for Defendants Springfield
Terminal Railway Company and Boston
and Maine Corporation*

October 16, 2006